

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL RIVERA, :
Plaintiff : **No. 1:15-cv-1659**

v. : **Judge Jones**

C.O. I J. O'HAIRE, et al., : **Complaint filed 08/27/2015**
Defendants : **Electronically Filed**

:

**DEFENDANTS' SUPPLEMENTAL
PRETRIAL MEMORANDUM**

Defendants, James O'Haire (“C.O. O’Haire”), Edmund Bienkowski (C.O. Bienkowski”) and Andrew Sromovski (“Sgt. Sromovski”) (collectively, “Defendants”), hereby submit this Pretrial Memorandum pursuant to Local Rule 16.5 and this Honorable Court’s August 15, 2016 Order, as follows.

A. Brief Statement Regarding Federal Court Jurisdiction

This action was brought pursuant to 42 U.S.C. § 1983. This Honorable Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

B. Summary of Statement of Facts & Contentions of Liability

Plaintiff, *pro se* inmate Michael Rivera (“Plaintiff” or “Mr. Rivera”), initiated this civil rights action, pursuant to 42 U.S.C. §1983, asserting violations of his Eighth Amendment right to be free from cruel and unusual punishment, in connection with an alleged incident of use of excessive force by the Defendants. The events underlying the Complaint occurred on January 20, 2015. On that day,

Plaintiff carried out a pre-meditated assault on C.O. Lewis on the "I" Block, outside of the dayroom. Numerous Correctional Officers responded to the attack, and attempted to restrain the Plaintiff. The Plaintiff refused to obey orders, necessitating that officers use force to take him into custody. Plaintiff was then transported to the trauma room in the infirmary. Plaintiff claims that he was assaulted by three guards in the trauma room. Specifically, he claims that C. O. O'Haire restrained him by holding his cuffs while the other two Defendants, Sgt. Sromovski and C.O. Bienkowski, hit, kicked and kneed him. Plaintiff claims that, as a result of this assault, he suffered injuries in the form of a laceration above his left eyebrow (approximately two (2) centimeters in length), a chipped tooth, and abrasions. The Defendants deny assaulting the Plaintiff.

C. Comprehensive Statement of Undisputed Facts

Inapplicable due to the fact that this is a *pro se* inmate matter.

D. Brief Statement of Damages

To be provided by the Plaintiff. Defendants submit that the Plaintiff is not entitled to any damages in connection with this lawsuit.

E. Witnesses

Commonwealth Defendants may call the following witnesses to testify at trial:

- C.O Joseph O'Haire (SCI Dallas)
- Sgt. Andrew Sromovski (SCI Dallas)
- C.O. Edmund Bienkowski (SCI Dallas)
- C.O. Keith Burritt (SCI Dallas)
- C.O. David Hoover (SCI Dallas)
- C.O. Jesse Harris (SCI Dallas)
- C.O. Robert Lewis
- Lt. John Robaczewski (SCI Dallas)
- Lt. Keith Starzynski (SCI Dallas)
- Lt. Kathleen Starck (SCI Dallas)
- Robert Tovay, L.P.N. (SCI Dallas)

Defendants reserve the right to call records custodians where appropriate.

Summary of Testimony of Each Expert Witness

N/A

F. Special Comment About Pleadings & Discovery

N/A

G. Summary of Legal Issues Involved & Legal Authorities Relied Upon

If the Plaintiff proves that force was used on him in the infirmary, whether that use of force was reasonable under the circumstances? *See Zimmerman v. Schaeffer*, 654 F. Supp. 2d 226, 247 (M.D. Pa. 2009) (“The relevant inquiry in evaluating a claim of excessive force by prison guards is whether the force used was applied in good faith to maintain or restore discipline, or instead sadistically or maliciously to cause harm. The latter use of force violates the Eighth Amendment. In *Whitley*, the Supreme Court set forth a number of factors that must be considered in evaluating the use of force by prison officials. *Whitley*, 475 U.S. at 319, 106 S.Ct. 1078. These include the extent of any injury to the prisoner, as well as “the need for application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response.” *Id.* Deference is given to prison officials’ adoption of policies to restore order and discipline.) (internal citations omitted).

H. Stipulations Desired

- That the Defendants’ exhibits be considered authentic
- That photocopies may be used in lieu of originals

I. Estimated Number of Trial Days

One (1) to two (2) days.

J. Any Other Pertinent Matter

N/A

K. Exhibit List

See attached Exhibit List

L. Special Verdict Questions

See Proposed Special Verdict Questions filed contemporaneously with this memorandum.

M. Statement That Person With Settlement Authority Was Notified

The person with settlement authority has been notified of the requirements set forth in Local Rule 16.2

N. Certificate Required Under Local Rule 30.10

N/A

O. Findings of Fact & Law

N/A

Respectfully submitted,

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First Deputy Attorney General

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Date: December 5, 2016

Counsel for Defendants

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CERTIFICATE OF SERVICE

I, Nicole J. Radziewicz, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on December 5, 2016, I caused to be served a true and correct copy of the foregoing document titled Defendants' Supplemental Pre-Trial Memorandum to the following:

Via U.S. First Class Mail

Michael Rivera, EW-2442
SCI-Fayette
P.O. Box 9999
LaBelle, PA 15450-0999
(*Pro Se Plaintiff*)

s/Nicole J. Radziewicz
NICOLE J. RADZIEWICZ
Deputy Attorney General

